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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,520	03/04/2002	Gary Odom		6595

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EXAMINER

CERVETTI, DAVID GARCIA

ART UNIT PAPER NUMBER

2136

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/090,520

Applicant(s)

ODOM, GARY

Examiner

David G. Cervetti

Art Unit

2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 13-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicant's arguments filed July 13, 2005, have been fully considered but they are not persuasive.
2. Claims 1-9 and 13-26 are pending and have been examined. Claims 10-12 were canceled as per above referenced amendment.

### ***Response to Amendment***

3. The objection to the Oath is withdrawn.
4. The objection to the Abstract of the disclosure is withdrawn.
5. The rejection under 35 USC § 101 is withdrawn.
6. Regarding claims 1-4, 6-8, and 16-18, Applicant's argument is based on the disclosure, not on the claimed language. The definition provided by applicant (i.e. "one or more") clearly reads on Zilberman teachings of using a keyboard.
7. Regarding claims 2-3, 5, and 14-15, Applicant's argument is based on the disclosure, not on the claimed language. Furthermore, McKeeth teaches using any input devices used to enter or communicate information to the computer system (column 2, lines 49-67) and to enter the signals in any agreed upon sequence (column 3, lines 1-67). McKeeth also teaches generating a geometric pattern when requesting access and the system may be configured to recognize the pattern under the condition that the user performs the pattern concurrently with scanning a fingerprint (column 6, lines 1-67) and to grant access in the absence of an exact match (column 5, lines 1-67, column 6, lines 1-67, column 7, lines 1-50) provided there is some matching information. Examiner would also like to point out that using an inexact match (i.e. provide for authentication

Art Unit: 2136

even when not a perfect match exists, a threshold level, or grant access if the information entered is statistically similar to some stored value) was conventional and well known (US Patent Nbr 4,621,334 to Garcia, US Patent Nbr 6,311,272 to Gressel).

8. Regarding claim 19, Wittenberg et al. (US Patent Number: 5,204,966, hereinafter Wittenberg) expressly teaches storing a fake key (column 1, lines 1-67). Applicant's argument appears to be based on the assumption that "the system that stores passwords" only stores some specific type of password, even though not claimed. Assuming *arguendo* that the claimed invention intends to claim that user passwords and fake passwords are stored within the same space/database/password file/etc, it would have been obvious to one of ordinary skill in the art to store reserved passwords/user names/account names within a database/password file/etc to provide for validation as taught by Wittenberg.

9. Regarding claims 20-23, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Furthermore, MPEP 2144 states "the rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally

Art Unit: 2136

available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); In re Eli Lilly & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning)". Zilberman and McKeeth are directed to authenticating users to computing systems, using different key trajectories.

### ***Drawings***

10. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 44 (figure 15), 63 (figure 18), 86 (figure 19). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top

Art Unit: 2136

margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

11. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "109" has been used to designate both "account identifier", "keyed-in account name" (page 5), and "biometric device" (fig 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

12. This is not a complete list of reference characters included in the drawings but not mentioned in the description or reference characters used to designate different parts.

### ***Specification***

13. The disclosure is objected to because of the following informalities: "denies access 27" (page 15, line 15), perhaps 37 was intended. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 2, 6, 9, and 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

***Claim Rejections - 35 USC § 102***

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**17. Claims 1, 4, 6-8, and 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Zilberman (US Patent Number: 6,442,692).**

**Regarding claim 1**, Zilberman teaches a computer-implemented system for creating a user signature subject to subsequent validation, wherein at least part of said signature comprises at least one user-determined transmission type (column 4, lines 60-67, column 5, lines 1-67).

**Regarding claim 4**, Zilberman teaches a computer-implemented method for creating a user signature comprising at least one transmission, said signature subject to subsequent validation, said method comprising the following steps: receiving user determination of a transmission type of at least one transmission; recording a plurality of signal types for at least one transmission; packaging at least one recorded transmission into at least one key (column 7, lines 36-67, column 8, lines 1-39).

**Regarding claim 6**, Zilberman teaches wherein receiving said user determination of at least one signal type of at least one transmission of said signature (column 4, lines 60-67, column 5, lines 1-27).

**Regarding claim 7**, Zilberman teaches wherein said received user-determined signal type is of a user-determined transmission type (column 4, lines 60-67, column 5, lines 1-27).



**Regarding claim 8**, Zilberman teaches wherein said signature comprises the entirety of a resource access submission (column 7, lines 37-67, column 8, lines 1-67).

**Regarding claim 16**, Zilberman teaches wherein receiving said user determination of at least one signal type of at least one transmission (column 5, lines 1-26).

**Regarding claim 17**, Zilberman teaches wherein receiving said user determination of a plurality of transmission types from a plurality of said recorded transmissions (column 5, lines 1-26).

**Regarding claim 18**, Zilberman teaches whereby recording a plurality of signal types emanating from a single transmission (column 5, lines 1-26).

**18. Claims 2-3, 5, 9, 14-15, and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by McKeeth (US Patent Number: 6,766,456).**

**Regarding claim 2**, McKeeth teaches a computer-implemented system for validating a signature comprising at least in part at least one composite signal from a plurality of devices (column 2, lines 49-67, column 3, lines 1-51, column 5, lines 1-67, column 6, lines 1-67).

**Regarding claim 3**, McKeeth teaches a computer-implemented system for incrementally validating a signature while receiving signature input (column 3, lines 52-67, column 4, lines 1-28, column 6, lines 1-67).

**Regarding claim 5**, McKeeth teaches a computer-implemented method for validating user input data comprising the following steps: accumulating possible keys based upon matching key data to initial input data; discarding accumulated keys based

Art Unit: 2136

upon failure to match to subsequent input data until completing validation or by process of elimination determining validation impossible (column 3, lines 52-67, column 4, lines 1-28).

**Regarding claim 9**, McKeeth teaches wherein validating said signature by accessing data from a plurality of keys, wherein at least one key has at least one trajectory (column 5, lines 1-67, column 6, lines 1-67).

**Regarding claim 14**, McKeeth teaches whereby said validation terminates passively (column 6, lines 10-33).

**Regarding claim 15**, McKeeth teaches wherein said passive termination being user-determined during creating said signature validation protocol (column 2, lines 49-67, column 3, lines 1-51).

**Regarding claim 24**, McKeeth teaches wherein said signature comprises at least in part one transmission from a single input device (column 2, lines 49-67, column 3, lines 1-51).

**Regarding claim 25**, McKeeth teaches wherein validating said signature at least in part using an inexact match (column 5, lines 1-67, column 6, lines 1-67, column 7, lines 1-50).

**Regarding claim 26**, McKeeth teaches wherein using an ordinal representing a signal type or transmission type (column 5, lines 1-67, column 6, lines 1-67).

***Claim Rejections - 35 USC § 103***

19. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**20. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKeeth, and further in view of Garcia (US Patent Number: 4,621,334).**

Regarding claim 13, McKeeth does not disclose expressly wherein said validating comprises signal matching, whereby said matching may be successful with an inexact match between stored data and corresponding submitted input data. However, Garcia teaches wherein said validating comprises signal matching, whereby said matching may be successful with an inexact match between stored data and corresponding submitted input data (column 5, lines 23-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to validate access when stored data and submitted data do not match exactly. One of ordinary skill in the art would have been motivated to do so to provide a personal identification system unique to the individual that cannot be utilized by a criminal even if the basic information were known (Garcia, column 1, lines 15-67).

**21. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman as applied to claim 4 above, and further in view of Wittenberg.**

Regarding claim 19, Zilberman does not disclose expressly wherein storing at least one fake key (a key for which authorized access is unobtainable). However, Wittenberg teaches the use of invalid passwords that do not result in authorized access (column 1, lines 35-47, column 5, lines 30-68). Therefore, it would have been obvious to

Art Unit: 2136

one having ordinary skill in the art at the time the invention was made to store at least one fake key. One of ordinary skill in the art would have been motivated to do so to be able to control the validity of keys (Wittenberg, column 1, lines 35-47).

**22. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman as applied to claim 4 above, and further in view of McKeeth.**

**Regarding claim 20**, Zilberman does not disclose expressly wherein packaging at least one next key trajectory in said key. However, McKeeth teaches wherein packaging at least one next key trajectory in said key (column 6, lines 10-33).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to package at least one next key trajectory in said key. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

**Regarding claim 21**, Zilberman does not disclose expressly wherein packaging a plurality of next key trajectories in said key. However, McKeeth teaches wherein packaging a plurality of next key trajectories in said key (column 6, lines 10-33).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to package a plurality of next key trajectories in said key. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

**Regarding claim 22**, Zilberman does not disclose expressly whereby said different next key trajectories are to keys in different files. However, McKeeth teaches whereby said different next key trajectories are to keys in different files (column 6, lines

Art Unit: 2136

10-33). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use next key trajectories to keys in different files. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

**Regarding claim 23**, Zilberman does not disclose expressly receiving input from a plurality of devices. However, McKeeth teaches wherein at least one transmission comprises input from a plurality of devices (column 3, lines 10-28, column 5, lines 1-67, column 6, lines 1-67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the input from a plurality of devices to create a user signature. One of ordinary skill in the art would have been motivated to do so to grant user access to the computer in the event of a satisfactory match (McKeeth, column 2, lines 1-30).

***Conclusion***

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David G. Cervetti whose telephone number is (571) 272-5861. The examiner can normally be reached on Monday-Friday 7:00 am - 5:00 pm, off on Wednesday.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2136

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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